

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|--------------------------|---|------------------------|
| JUAN CORTEZ, et al., |) | |
| |) | |
| Plaintiffs, |) | No. 09 C 653 |
| |) | |
| vs. |) | Judge Gettleman |
| |) | Magistrate Judge Mason |
| CITY OF CHICAGO, et al., |) | |
| |) | |
| Defendants. |) | |

PLAINTIFF'S RULE 50 MOTION

Plaintiff respectfully requests judgment as a matter of law on his claim for unlawful entry into home. Under the Court's current proposed instruction, the Defendants *must* show that entry into the home was necessary to prevent escape. This is not an escape case, and no evidence has been shown that Juan Cortez had the desire to escape from his home, or flee the jurisdiction. Because there is no evidence of escape, Plaintiff is entitled to judgment as a matter of law pursuant to Rule 50(a).

In addition, the Court proposes to instruct the jury that Defendants must establish there was not sufficient time to get a warrant. At trial in this case, Defendants presented no evidence about how long it takes to get a warrant, including possibly minutes to get a telephonic warrant. United States v. Jones, 696 F.2d 479, 487-88 (7th Cir.1982) (government should seek to obtain telephonic warrant whenever practicable). Also, this is a case involving a gun, not a case where the evidence could be disposed of easily (e.g. narcotics). Because no evidence at all was presented about the time to get a warrant, and the Defendants have the burden, Plaintiff is entitled to judgment.

Respectfully submitted,

/s/ Lawrence Jackowiak
Counsel for the Plaintiff

Adele D. Nicholas
Lawrence V. Jackowiak
Law Offices of Lawrence V. Jackowiak
20 North Clark Street, Suite 1700
Chicago, Illinois 60602
(312) 795-9595